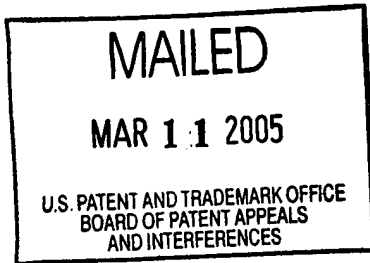


The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte GEOFFREY S. RATTE

Appeal No. 2005-0480
Application No. 09/638,743

ON BRIEF

Before FRANKFORT, MCQUADE and NASE, Administrative Patent Judges.

Per Curiam

DECISION ON APPEAL

Geoffrey S. Ratte appeals from the examiner's rejection of claims of claims 1 and 3 through 11, all of the claims pending in the application.

THE INVENTION

The invention relates to "a streamline clamp sinker for attachment to a fishing line . . . with the clamp sinker presenting a streamline shape to inhibit action that might twist the line as . . . the clamp sinker is pulled through the water"

(specification, page 4). Representative claim 1 reads as follows:¹

1. A bullet shaped line clamp sinker movable between an open and closed condition comprising:

a body composed of a bendable material, said body being cone shape and having a neutral surface, said body having a first end and a second end with said first end of said body being smaller than the second end of said body with said body having a smoothly converging exterior surface from said first end to said second end to form a streamline shape that inhibits snagging and propeller action as the body is pulled through a fluid;

a first curved gripping surface on said body, said first curved gripping surface undulating through said body to provide a surface free of angled corners to thereby inhibit line damping, said first curved gripping surface extending from said first end to said second end, said first curved gripping surface having at least one surface contouring protrusion, said first curved gripping surface having a portion extending proximate a geometric center of said line clamp; and

a second curved gripping surface on said body said second curved gripping surface undulating through said body to provide a surface free of angled corners to thereby inhibit line damping, said second curved gripping surface extending from said first end to said second end with said second curved gripping surface including a surface contouring recess mateable with said protrusion to produce a nonlinear path through said resilient body so that when said second curved gripping surface and said first curved gripping surface coact to grasp a line located therein to prevent the slippage of the line therein as the line is squeezed and held therebetween by bending said line clamp around the line.

¹ In claims 1 and 3, the term "said resilient body" lacks a proper antecedent basis. In claim 3, the reference to "The bullet shaped line clamp sinker" in the preamble lacks a proper antecedent basis. In claim 11, the first recitation of "said first line gripping surface" does not make sense and the terms "said firth line gripping surface" and "the third end of said body" lack a proper antecedent basis. In the event of further prosecution before the examiner, appropriate action should be taken to correct these informalities.

THE PRIOR ART

The references relied on by the examiner as evidence of obviousness are:

Wymore	4,944,107	Jul. 31, 1990
Crumrine	5,537,775	Jul. 23, 1996

THE REJECTIONS

Claims 1, 3, 4 and 6 through 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wymore.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Wymore in view of Crumrine.

Attention is directed to the main and reply briefs (Paper Nos. 13 and 15) and to the Office action appealed from and the answer (Paper Nos. 11 and 14) for the respective positions of the appellants and the examiner regarding the merits of these rejections.²

DISCUSSION

Wymore discloses sinkers for weighting a fishing line, hook and bait so that the bait can achieve a more advantageous depth for catching fish. In applying Wymore against the appealed

² Although the statement of the first rejection in Paper No. 11 does not include claim 11, the accompanying explanation of the rejection and the restatement of the rejection in the answer indicate that the omission was inadvertent.

claims, the examiner relies on the embodiments shown in Figures 1 through 3 and Figures 4 through 6, respectively.

The embodiment shown in Figures 1 through 3, termed a split shot sinker, comprises a spherical body composed of top and bottom elements 20 and 22 connected by a living hinge 26. The top and bottom elements define a pair of complementary curved line-gripping surfaces 28 and 30 for fixedly clamping the fishing line. This split shot sinker does not meet the limitations in independent claims 1, 3 and 11 requiring the sinker body to have a "cone shape."

The embodiment shown in Figures 4 through 6, termed a worm weight, comprises a conically shaped body formed of symmetrical top and bottom body elements 38 and 40 joined by a living hinge 42. The top and bottom body elements have having cooperating line containers 46 and 47 for slidably capturing a fishing line. This worm weight does not meet the limitations in independent claims 1, 3 and 11 requiring the sinker body to have line gripping surfaces.

In proposing to combine the two embodiments, the examiner concludes that it would have been obvious to a person of ordinary skill in the art "to provide the cone shaped embodiment of Fig. 4 with curved gripping surfaces as shown in Fig. 1 for the purpose of fixing the line in relation to the sinker" (Paper No. 11, page

3). In further support of this proposed combination, the examiner submits that:

[o]ne skilled in the art would have found it obvious to combine the two sinkers since for example under some types of fishing conditions, one would desire the shape of the bass fishing sinker as shown in Fig. 4 but would also want the sinker clamped on the fishing line such as in the split shot sinker as shown in Figs. 1-3, 5 for the purpose of keeping the sinker weedless. The sinker of Fig. 4 has a more streamlined shape and hence would tend to be more "weedless". Also, a fisherman might prefer to keep the sinker a certain distance from the bait. Hence, one would then want to clamp the sinker to the line at a predetermined distance above the bait such as when fishing with minnows to provide the minnow with more freedom to swim around in the water to attract the target species [answer, pages 3 and 4].

Rejections based on 35 U.S.C. § 103(a) must rest on a factual basis. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. Id.

In the present case, Wymore describes each of the subject sinker embodiments in terms of "all the essential elements" thereof (column 3, lines 4 and 5 and lines 14 and 15). The reference itself provides no suggestion or motivation for selectively combining the features of these mutually exclusive sinkers in the manner proposed. The examiner's rationalization

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to the contrary rests on speculation and unfounded assumptions which premise an impermissible hindsight reconstruction of the invention set forth in claims 1, 3 and 11.

Accordingly, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of independent claims 1, 3, and 11, and dependent claims 4 and 6 through 10, as being unpatentable over Wymore.

As Crumrine does not cure the above noted shortcomings of Wymore, we also shall not sustain the standing U.S.C. § 103(a) rejection of dependent claim 5 as being unpatentable over Wymore in view of Crumrine.

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SUMMARY

The decision of the examiner to reject claims 1 and 3 through 11 is reversed.

REVERSED


Charles E. Frankfurt

CHARLES E. FRANKFORT
Administrative Patent Judge


JOHN P. MCQUADE
Administrative Patent Judge

JOHN P. MCQUADE
Administrative Patent Judge

BOARD OF PATENT
APPEALS
AND
INTERFERENCES


JEFFREY V. NASE

~~JEFFREY V. NASE~~
Administrative Patent Judge

JPM/gjh

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Application No. 09/638,743

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